



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE
355-A Deadmore Street, Abingdon, Virginia 24210
(276) 676-4800 FAX (804) 698-4178
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Jeffrey Hurst
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DICKENSON COUNTY PUBLIC SERVICE AUTHORITY
FOR
HAYSI SEWAGE TREATMENT PLANT COLLECTION SYTEM
VPDES Permit No. VA0067571**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Dickenson County Public Service Authority, regarding the Haysi Sewage Treatment Plant collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters. The "303(d) report" is a subset of the "305(b) report".
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Dickenson County PSA” or “PSA” means the Dickenson County Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Dickenson County Public Service Authority is a “person” within the meaning of Va. Code § 62.1-44.3.
5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “Facility”, “Plant” or “STP” means the Haysi Sewage Treatment Plant located at State Route 613, North Splashdam Road, Haysi, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Haysi.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” means VPDES Permit No. VA0067571, which was reissued under the State Water Control Law and the Regulation to the Dickenson County Public Service Authority on October 1, 2018 and which expires on September 30, 2023.
12. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

13. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
14. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The Dickenson County PSA owns and operates the STP and the associated collection system. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the Plant, to the Russell Fork, in strict compliance with the terms and conditions of the Permit.
2. The Russell Fork is located in the Tennessee-Big Sandy River Basin, Big Sandy River Subbasin, Section 4, Class IV, Special Standards: None. The Russell Fork is listed in DEQ’s 305(b)/303(d) report as impaired for failure to support the recreation use due to exceedances of the water quality standard for bacteria. Currently, there is no TMDL for the Russell Fork.

3. On April 15, 2020, the PSA notified DEQ of an overflow from a manhole located on Bartley Street in Haysi. The overflow was caused by a line blockage, which was jetted and vacuumed on April 22, 2020, stopping the overflow. The PSA's response to the overflow was delayed due to COVID-19 issues.
4. On September 21, 2020, DEQ was notified by the Virginia Department of Health (VDH) of a complaint received by VDH regarding a sanitary sewer overflow in the Centennial Heights Apartments area of Haysi, Virginia. On September 22, 2020, VDH staff visited the area and confirmed the occurrence of an overflow. On September 22, 2020, DEQ notified the PSA of the overflow. After attempts to unclog the line were unsuccessful, the PSA made the decision to reconstruct an existing logging road in order to access the site with equipment necessary to clear the blockage. On October 8, 2020, the line blockage was removed, and the overflow stopped.
5. On October 21, 2020, the PSA was notified by a resident of a sanitary sewer overflow discharging from a manhole into the Russell Fork near Bartley Street in Haysi, Virginia. The line blockage was removed, and the overflow ceased on October 22, 2020.
6. On October 29, 2020, the PSA was notified by a resident of an overflow from a manhole near Bartley Street in Haysi, Virginia. PSA staff visited the location and verified that an overflow was occurring. The overflow was reportedly caused by inflow and infiltration associated with heavy rainfall. PSA staff performed a follow up visit to the manhole on October 30, 2020 and found that the overflow had ceased.
7. On December 3, 2020, SWRO issued NOV No. W2020-12-S-0001 to the PSA, citing the overflow events described above.

The Permit, at Part II, Section Q, states, in part: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

Va. Code § 62.1-44.5 states, in part: "Except in compliance with a certificate or permit issued by the Board..., it shall be unlawful for any person to... [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...."

The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

8. On December 11, 2020, SWRO notified the PSA of a complaint received by DEQ regarding ongoing sewer overflows in the Bartley Street area of Haysi. The PSA responded to SWRO on that same date and advised that, while it had received other reports of overflows in the Bartley Street area, PSA staff had not observed any overflows

in the area while onsite during the previous week. The PSA response also advised that smoke testing of the Bartley Street area collection system was to be performed on the morning of December 11, 2020.

9. On January 4, 2021, the PSA responded to the December 3, 2020 NOV via telephone. DEQ staff requested that the PSA provide a written response to the NOV summarizing actions undertaken by the PSA, as well as any future plans, to address the ongoing overflow issues cited in the NOV. PSA staff advised that a written response would be provided later that same week.
10. On January 6, 2021, the PSA provided a written response to the December 3, 2020 NOV. The response stated that the PSA had jetted and vacuumed the section of line near Bartley Street on numerous occasions in attempt to address the overflow issues. The response also summarized various issues identified during smoke testing, performed on December 11, 2020, and indicated that the PSA was in the process of scheduling a water/wastewater consulting firm to survey the section of line near Bartley Street with camera equipment. In addition, the PSA stated that it was soliciting pricing for prescreening equipment to be installed upstream of the main collection system at the Centennial Heights Apartment complex, where line blockages commonly occur.
11. On January 12, 2021, a conference call was held between DEQ and the PSA to discuss the PSA's response to the December 3, 2020 NOV. During the call DEQ requested additional information regarding the issues identified in the PSA's January 6, 2021 written response. The PSA stated that an obstruction had been encountered in the section of line near Bartley Street each time the line had been jetted. The PSA advised that the line obstruction is located within a portion of line where no easement exists to provide access for truck mounted equipment, and that attempts were being made to identify an alternate access. The PSA indicated that it would provide a more detailed written response, with planned activities and a rough timeline, along with interim updates.
12. On January 25, 2021, the PSA provided a follow up written response to the December 3, 2020 NOV. The response reiterated much of the information provided in the initial written response and during the January 12, 2021 conference call, but did not provide a timeline for completion of planned activities.
13. On February 18, 2021, SWRO sent the initial draft Order to the PSA for its review. On February 25, 2021, the PSA requested a conference call with DEQ to discuss the draft Order. The conference call between DEQ and the PSA was held on March 4, 2021. During the call, the PSA requested clarification regarding various portions of the draft Order and also requested a reduction in the proposed civil charge due to the financial burden it would place on the PSA. The PSA also expressed concern regarding the proposed timeframe for completion of collection system repairs, citing the fact that the extent of the repairs will not be known until after completion of the collection system survey. The PSA advised that it would submit a letter to DEQ after its next board meeting, scheduled for March 16, 2021, outlining the efforts underway to address

collection system issues and the economic hardships being experienced by the PSA in order to aid DEQ in evaluation of the proposed civil charge.

14. On March 18, 2021, DEQ received a letter from the PSA, dated March 17, 2021. The letter discussed economic challenges faced by the PSA, to include diminishing revenues resulting from a decline in population related to job losses in the fossil fuel industry and a decline in tax revenue and severance tax due to decreased demand for fossil fuels extracted from the county. The letter also outlined work, both underway and scheduled, to address collection system issues and advised that the PSA had made a commitment to repair/replace any damaged manholes or sewer lines that may impede the flow of wastewater on Bartley Street. The PSA stated that it will have to absorb all of these work expenses, and that it had solicited for additional funding to help defray the costs.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. The Department has issued no permits or certificates to the PSA for discharge from the Facility other than VPDES Permit No. VA0067571.
17. The Russell Fork is a surface water located partially within the Commonwealth and is a “state water” under State Water Control Law.
18. Based on the April 15, 2020, October 21, 2020 and October 29, 2020 notifications of unauthorized discharges submitted to SWRO by the PSA, the September 21, 2020 notification of an unauthorized discharge submitted to SWRO by VDH, the December 11, 2020, January 6, 2021 and January 25, 2021 correspondence to SWRO from the PSA and the January 12, 2021 conference call between SWRO and the PSA, the Board concludes that the PSA has violated Va. Code § 62.1-44.5, the Regulation 9 VAC 25-31-50 and the Permit, by discharging untreated sewage and municipal wastes from the STP collection system while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(14), above.
19. In order for the PSA to complete its return to compliance, DEQ staff and representatives of the PSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Dickenson County Public Service Authority, and the Dickenson County Public Service Authority agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of \$7,280.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Dickenson County Public Service Authority shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Dickenson County Public Service Authority shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Dickenson County PSA for good cause shown by the PSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2020-12-S-0001, dated December 3, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The PSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The PSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the PSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The PSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

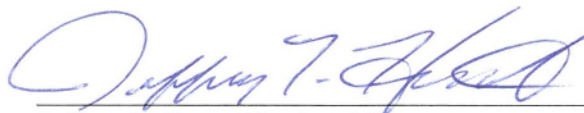
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the PSA. Nevertheless, the PSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the PSA has completed all of the requirements of the Order;
- b. the PSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the PSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the PSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the PSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the PSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the PSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the PSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of June, 2021.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

The Dickenson County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 04-26-2021 By: Ron Phillips, Executive Director
(Person) (Title)
Dickenson County Public Service Authority

Commonwealth of Virginia

City/County of Dickenson

The foregoing document was signed and acknowledged before me this 26th day of
April, 2021, by Ron Phillips who is
Executive Director of the Dickenson County Public Service Authority, on behalf
of the Authority.

Crystal S. Phillips
Notary Public

253112
Registration No.

My commission expires: 12/31/2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, the Dickenson County PSA agrees to implement the following actions by the dates noted below:

1. Complete a survey of the collection system along Bartley Street utilizing camera equipment in order to assess the structural integrity of the system and to identify obstructions within the system.....within 30 days of the effective date of this Order.
2. Provide a report that: a) details all issues identified during the survey of the collection system; b) clearly identifies the recommended scope of work for repair of the issues; and c) includes a defined project schedule/timeline and completion date for collection system repairs.....within 60 days of the effective date of this Order. Upon review and approval by DEQ staff, the report and associated project schedule/timeline will be incorporated into this Order and will become enforceable.
3. In order to restore full flow capacity and eliminate or minimize future overflow events, complete repair of all issues identified during the survey of the collection system along Bartley Street in accordance with the defined schedule/timeline and completion date established under item 2(c), above.
4. Complete installation of prescreening equipment upstream of the main collection system at the Centennial Heights Housing Project.....within 180 days of the effective date of this Order.
5. Provide progress reports regarding the items outlined within this Schedule of Compliance, with the first report due 30 days after the effective date of this Order and subsequent reports due every 30 days for the duration of the Order.

Unless otherwise specified in this Order, the PSA shall submit all requirements of Appendix A of this Order to:

Ruby Scott
Compliance Auditor
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
Phone: (276) 676-4882
Fax: (804) 698-4178
ruby.scott@deq.virginia.gov